

No. 15055

United States
Court of Appeals
for the Ninth Circuit

BEAUMONT SILVERTON, etc.,
Appellant,
vs.
VALLEY TRANSIT CEMENT CO., INC., et al.,
Appellees.

Supplemental
Transcript of Record

Appeal from the United States District Court for the
Southern District of California
Southern Division.

FILED

APR 24 1957

PAUL P. O'BRIEN, Clerk

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

For Appellant:

JOHN C. STEVENSON,
LIONEL RICHMAN,
756 South Broadway,
Los Angeles 14, California.

For Appellee:

HORTON & KNOX,
JAMES H. CARTER,
101 Law Building,
895 Broadway, El Centro, California.

In the District Court of the United States in and
for the Southern District of California, South-
ern Division

No. Civil 1485-SD

BEAUMONT SILVERTON, etc.,

Plaintiff,

vs.

VALLEY TRANSIT CEMENT CO., INC., et al.,

Defendants.

NOTICE OF MOTION TO DISMISS

To the Plaintiff Above Named, Beaumont Silverton,
and to Stevenson & Richman, His Attorneys:

You and each of you will please take notice that Defendants Valley Transit Cement Co., Inc., a Corporation; George Conway and Robert L. Wyatt, individually and doing business under the fictitious firm name of Valley Transit Cement Company, a Co-partnership, will move the above-entitled Court, on Monday, November 7, 1955, at ten o'clock a.m., or as soon thereafter as Counsel may be heard, at the United States Court and Customs House, in the City of San Diego, California, for its order to dismiss the complaint, or in the alternative to dismiss each and every cause of action, severally, the first cause of action, and each cause of action thereafter, to and including the twenty-sixth cause of action of said complaint.

This motion to dismiss the complaint and in the alternative, the first cause of action through the twenty-sixth cause of action, inclusive, severally, of said complaint, will be made on the following grounds:

1. That the Court lacks jurisdiction over the subject matter of said complaint, and in the alternative, the Court lacks jurisdiction over the subject matter of each cause of action of said complaint, severally, from the first cause of action through the twenty-sixth cause of action, inclusive;

2. That the complaint fails to state a claim upon which relief can be granted, and in the alternative, that each of the causes of action from the first cause of action to the twenty-sixth cause of action, inclusive, fails to state a claim upon which relief can be granted;

3. That the causes of action from the first cause of action to the twenty-sixth cause of action, inclusive, are barred by the provisions of the Statute of Limitations of the State of California, Labor Management Relations Act of 1947, and acts amendatory thereto, and the Fair Labor Standards Act of 1938 and acts amendatory thereto.

This motion will be made and based upon Memorandum of Points and Authorities, this Motion and upon all papers, records and pleadings on file in this matter.

Dated this 28th day of October, 1955.

HORTON & KNOX,

By /s/ JAMES H. CARTER,
Attorneys for Defendants Valley Transit Cement
Company, Inc., George L. Conway and Robert
L. Wyatt, Individually and Doing Business
Under the Fictitious Firm Name of Valley
Transit Cement Company, a Co-Partnership.

Affidavit of Service by Mail attached.

[Endorsed]: Filed October 31, 1955.

[Title of District Court and Cause.]

AFFIDAVIT OF LIONEL RICHMAN IN SUP-
PORT OF MOTION TO AMEND COM-
PLAINT

State of California,
County of Los Angeles—ss.

Lionel Richman, being first duly sworn, deposes
and says:

That affiant is an attorney at law licensed to prac-
tice in the State of California. That prior to the
commencement of this action, the real parties in in-
terest whose names appear in the Complaint as as-
signors executed and delivered to affiant a written
consent and authorization to commence this suit on
their behalf. Such written authorization is attached

hereto as Exhibit 2 and incorporated herein by reference.

/s/ LIONEL RICHMAN.

Subscribed and sworn to before me this 15th day of November, 1955.

[Seal] /s/ LEWIS GARRETT,
Notary Public in and for Said County of Los Angeles, State of California.

EXHIBIT No. 2

I hereby assign my claim against the said Valley Transit Cement Company, Inc., to Beau Silverton, for purposes of collection only.

Dated this 8th day of September, 1951.

/s/ JAMES M. TURNER.

I hereby assign my claim against the said Valley Transit Cement Company, Inc., to Beau Silverton, for purposes of collection only.

Dated this 26th day of April, 1951.

/s/ BERT N. LOOP.

I hereby assign my claim against the said Valley Transit Cement Company, Inc., to Beau Silverton, for purposes of collection only.

Dated this 27th day of April, 1951.

I, James E. Butler, hereby retain John C. Stevenson and Lionel Richman attorneys to handle my wage claim against the Valley Transit Cement Company, Inc.

I hereby assign my claim against the said Valley Transit Cement Company, Inc., to Beau Silverton, for purposes of collection only.

Dated this 25th day of April, 1951.

/s/ TRUMAN GREGORY.

I hereby assign my claim against the said Valley Transit Cement Company, Inc., to Beau Silverton, for purposes of collection only.

Dated this 26th day of April, 1951.

/s/ BEN ROSE.

I hereby assign my claim against the said Valley Transit Cement Company, Inc., to Beau Silverton, for purposes of collection only.

Dated this 25th day of April, 1951.

/s/ JAMES M. TURNER.

I hereby assign my claim against the said Valley Transit Cement Company, Inc., to Beau Silverton, for purposes of collection only.

Dated this 25th day of April, 1951.

/s/ H. B. TURNER.

I hereby assign my claim against the said Valley Transit Cement Company, Inc., to Beau Silverton, for purposes of collection only.

Dated this 27th day of April, 1951.

/s/ JOHN HOWARD GLASS.

I hereby assign my claim against the said Valley Transit Cement Company, Inc., to Beau Silverton, for purposes of collection only.

Dated this 21st day of April, 1951.

/s/ LESTER HOGAN.

I hereby assign my claim against the said Valley Transit Cement Company, Inc., to Beau Silverton, for purposes of collection only.

Dated this 25th day of April, 1951.

/s/ L. CHICHESTER.

I hereby assign my claim against the said Valley Transit Cement Company, Inc., to Beau Silverton, for purposes of collection only.

Dated this 24th day of April, 1951.

/s/ JAMES L. JOHNSON.

I hereby assign my claim against the said Valley Transit Cement Company, Inc., to Beau Silverton, for purposes of collection only.

Dated this 25th day of April, 1951.

I, Tom Ward Garrett, hereby retain John C. Stevenson and Lionel Richman attorneys to handle my wage claim against the Valley Transit Company, Inc.

I hereby assign my claim against the said Valley Transit Cement Company, Inc., to Beau Silverton, for purposes of collection only.

Dated this 27th day of April, 1951.

/s/ CHARLES M. PARKER.

[Endorsed]: Filed November 16, 1955.

[Title of District Court and Cause.]

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the above-entitled Court, here certify that the items listed below constitute the Supplemental Transcript of Record on Appeal to the United States Court of Appeals for the Ninth Circuit, in the above-entitled cause:

A. The foregoing pages numbered 1 to 10, inclusive, containing the original

Notice of Motion to Dismiss;

Affidavit of Lionel Richman in Support of Motion to Amend Complaint;

Designation of Supplemental Record on Appeal.

Witness my hand and seal of the said District Court this 21st day of February, 1957.

[Seal]

JOHN A. CHILDRESS,
Clerk;

/s/ CHARLES E. JONES,
Deputy.

[Endorsed]: No. 15055. United States Court of Appeals for the Ninth Circuit. Beaumont Silvertown, etc., Appellant, vs. Valley Transit Cement Co., Inc., et al., Appellees. Supplemental Transcript of Record. Appeal from the United States District Court for the Southern District of California, Southern Division.

Filed February 25, 1957.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the
Ninth Circuit.